

**U.S. Serial No. 09/805,522**

**Amendment dated April 3, 2006**

**Response to Office Action mailed December 1, 2005**

### **Drawing Amendments**

Please replace the drawings currently on file with the two sheets of formal drawings

(Figures 1 and 2) enclosed herewith.

## **REMARKS**

### **I. Status of the Claims**

Claims 1-13 are pending in the application, with claims 9-13 withdrawn from consideration. In the outstanding Office Action, claims 1-8 stand rejected. By the present Amendment, claims 9-13 have been cancelled without prejudice or disclaimer, claim 1 has been amended, and new claims 14-20 have been added. No new matter has been added. Entry of the Amendment and favorable reconsideration of the application are respectfully requested.

### **II. Drawings**

The drawings stand objected to by the examiner. In response, applicant is filing herewith two sheets (Figures 1 and 2) of formal replacement drawings. Accordingly, applicant respectfully requests that the objection be withdrawn.

### **III. Rejections under 35USC §112**

Claims 1-8 stand rejected under 35 USC §112, second paragraph, as being indefinite. In this regard the examiner points to the preamble of Claim 1 reciting “a method of cost-effectively funding a loan” and noting that it is unclear from the steps of the claim as to how and at what step the funding actually takes place. In response, applicant has amended Claim 1 to recite that it is directed to a method of “facilitating funding of a loan.” As such, the method need not include the actual funding, but rather is directed to steps that make the funding more effective or attractive.

With regard to Claim 6, the Office Action notes that the term “a bankruptcy-remote entity” is unclear. Applicant respectfully submits that such term is well known to one of ordinary skill in the art.

Accordingly, applicant respectfully submits that the claims point out and distinctly claim subject matter regarded as the invention and request withdrawal of the rejections under §112.

#### **IV. Rejections under 35 USC §103**

Claims 1-8 stand rejected under 35 USC §103 as being unpatentable over US Patent No. 5,966,700 to Gould et al (“Gould”). Applicant respectfully traverses the rejection.

The invention as defined by claim 1 involves a lending institution providing a financial guaranty to an insurance company as first loss protection for the loan and receiving insurance for the loan from the insurance company based on the financial guarantee. As such (and as described in greater detail in the specification, for example, in the Summary of the Invention) the lending institution receives insurance, thereby essentially transferring the risk associated with the loan to an entity other than the lending institution, namely the insurance company. The lending institution merely retains a first loss. Because the lending institution selectively retains the first loss, which typically is the most expensive and risky, the lending institution has the ability to more effectively, and readily, obtain insurance and transfer risk.

In contrast, the cited portion of Gould describes the mortgage originator, or lender, retaining risk, not transferring risk to a separate entity, in particular to an insurance company. There is no mention of an insurance company or the lender retaining a first loss. As such, Gould

fails to teach or suggest the limitation of the lending institution providing “a financial guaranty to an insurance company as a first loss protection for the loan.”

Applicant respectfully submits that the dependent claims are further distinguishable from the cited references. For example, claim 2 recites that the lending institution includes a reinsurer. By definition, the reinsurer reinsures loss from an insurance company. Thus, claim 2 recites, “the financial guaranty is reinsurance provided by the reinsurer.” Moreover, claim 2 provides that the lending institution includes both a lender and a reinsurance company with the loan being that of the lender, an arrangement not suggested by Gould. Claim 3 mirrors claim 2 except that the loan is that of a third party.

Accordingly, applicant respectfully submits that Claim 1, as well as Claims 2-8, which depend therefrom, are neither anticipated nor rendered obvious by Gould and are in condition for allowance.

#### **V. New Claims 14-20**

By the present Amendment, Applicant has added new independent claim 14. The scope of claim 14 mirrors that of original claim 1 but more clearly characterizes the invention. Dependent claims 15-20 mirror original claims 2-7. More specifically, claim 14 explicitly provides that the risk of loss is transferred to the insurance company and, by the lending institution providing a financial guaranty to the insurance company, the lending institution assumes the first loss of the loan. In this regard claim 14 recites:

receiving insurance for the loan from an insurance company, thereby transferring loss to the insurance company;

providing a financial guaranty to the insurance company in return for a first loss, the lending institution thereby retaining the first loss and the insurance company assuming the other loss.

As discussed above, neither Gould nor any of the other art of record teaches or suggests a lending institution transferring risk of the loan to an insurance company and, in return for a financial guaranty, assuming the first loss for the loan. Accordingly, Applicant respectfully submits that new claims 14-20 are neither anticipated nor rendered obvious by the art of record and are in condition for allowance.

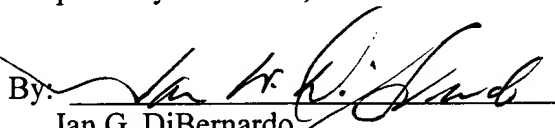
#### **CONCLUSION:**

Applicants thus believe that the claims in the present application are in condition for allowance. Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and remarks. If the Examiner has any questions or suggestions regarding this response or the application, she is invited to contact the undersigned at the telephone number provided below.

U.S. Serial No. 09/805,522  
Amendment dated April 3, 2006  
Response to Office Action mailed December 1, 2005

If any extension of time is required to have this paper entered and considered, such extension is hereby petitioned. Any additional fees or charges necessary in connection with the present application are hereby authorized to be charged to Deposit Account No. 19-4709.

Respectfully submitted,

By:   
Ian G. DiBernardo  
Registration No. 40,991  
Attorney For Applicant  
Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038-4982  
(212) 806-5867